In the Supreme Court

of the United States

OCTOBER TERM, 1974

74-444

ROBERT BRADLEY JONES, HILDA STUBBNGS, SIDNEY FREEMAN, LLOYD SMITH, and MARY LOU IRVING, Members of TAXPAYERS' INVESTIGATIONAL COMMITTEE OF OREGON, an unincorporated association,

Petitioners,

vs.

GEORGE P. SCHULTZ, now by succession, WILLIAM E. SIMON, Secretary of the Treasury of the United States, and ROGERS C. B. MORTON, Secretary of the Interior of the United States,

Respondents.

BRIEF OF AMICUS CURIAE ASSOCIATION OF O & C COUNTIES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTEREST OF THE AMICUS CURIAE

The primary purpose of this brief is to express the support of the 18 O & C Counties for the position of the respondents, and to detail the reasons for that support. It is not our intention to present a point for point rebuttal of the petition for certiorari.

Your amicus curiae is a voluntary unincorporated association of the County Commissioners of *all* the 18

counties in which the O & C Lands are located. It is, in effect, an unofficial but fully representative spokesman for those 18 county governments in matters involving the O & C Lands.

ARGUMENT

There are two aspects of the case upon which the Association should comment.

A. Question of standing.

Who is the real party in interest here? It is plain that the real party in interest in any claim for the payments demanded by petitioners would be the county governments.

The substantive law under which petitioners claim is the 1937 McNary Act, 50 Stat. 874, see Complaint, paragraphs X and XI. That statute provided that after repayment to the U. S. Treasury of "all reimbursable charges against the O & C Land Grant Fund," 25% of O & C revenues would be paid annually "*to the several counties*," referring to "the *counties* in which the lands revested . . . are situated," (see R-184).

Therefore, if there is an enforceable right under the 1937 McNary Act to the payment petitioners seek to compel, the governing substantive law on which petitioners rely has expressly vested that right in the "*counties*," and so the 18 O & C Counties are the real parties in interest.

Petitioners' prayer states that the money "belongs to the 18 O & C Counties" and asks that it be paid to the counties.

It is plain that the real parties in interest in any claim for the payments demanded by petitioner would be the county governments.

As the Ninth Circuit correctly concluded (see Opinion, p. 29 of Petition for Certiorari), petitioners are thus not the real parties in interest, and lack standing.

B. Reason for the Counties' position.

Your amicus curiae, speaking for the real parties in interest, wishes to explain why no county supports petitioners' suit. In brief, our position is this:

The relief prayed for by petitioners would be contrary to the best interests of the people of the O & C Counties, the State of Oregon, and the nation.

The present distribution formula and practice *insures* that 25% of the receipts of timber sales (this 25% is called the "plowback fund") is reinvested in intensive multiple use management of the lands. This 25% is *over and above* another 25% of the receipts which is committed by law to administration of the lands. This *certainty* of funding, not dependent on annual congressional appropriations which might be reduced or eliminated from year to year, makes possible long-term sustained-yield management planning. This has increased the timber sales receipts

six-fold in the years the "plowback" procedure has been followed; the allowable cut has been nearly *doubled* in the same time, all without prejudicing the multiple-use concept (water resources, recreation, wildlife habitat, forage, etc.).

This unique federal-local partnership has provided the best managed public timber resource in the country. Simply put, the counties would rather have 50% of the receipts of an ideally-managed forest resource than 75% of the receipts of a poorly-managed forest resource.

Their position is perhaps best expressed in a study by the University of Oregon, the *Significance of the O & C Forest Resource in Western Oregon*, 1968 (Bureau of Governmental Research and Service), as follows:

> "The revenue-sharing arrangement has much to do with creating this desirable situation. Three factors are believed to be significant: First, the established practice of plowing back one-third of the counties' share to intensify the development and management of these lands; second, the certainty of these plowed-back shares as a basis for long-range financing for these expenditures in contrast to the uncertainty of annual appropriations; and third, the built-in incentive for the counties and the local public to reinvest a portion of their share of receipts in order to perpetuate and increase the future returns, not only to secure the portion of the revenue they retain for county government, but for the related and very real benefits to economic activity and an improved environment."

The significance of these lands to the economy of Oregon gives all the people of Oregon a vested interest in their continued good management. This watchful local interest also assures the federal government and all the people of the United States that good management of this valuable asset will continue and be intensified. The resulting local developments will not only yield direct revenues to the Federal Treasury in the form of O & C receipts, but also indirectly yield additional revenues in the form of taxes on the corporations, their employees, and the related service industries.

This judgment has been shared by the elected officials of the counties and of the State of Oregon for over 20 years. That collective representative judgment should not be overturned at the behest of a small group of persons with passions and motivations of obscure origins.

CONCLUSION

The petition should be denied.

Respectfully submitted,

JOHN R. FAUST, JR.
HARDY, BUTTLER, MCEWEN,
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Of Attorneys for Amicus Curiae,
Association of O & C Counties

I hereby certify that I served the foregoing Brief of Amicus Curiae Association of O & C Counties in Opposition to Petition for Writ of Certiorari on Donald C. Walker, Attorney for Petitioners; Sidney I. Lezak, U. S. Attorney, and Jack G. Collins, Assistant U. S. Attorney, Attorneys for Respondents; and Robert H. Bork, Solicitor General; on the .....day of November, 1974, by mailing to each of them three true and correct copies thereof, certified by me as such. I further certify that said copies were placed in sealed envelopes addressed to said attorneys, as follows: Donald C. Walker, Attorney for Petitioners, 2314 Lloyd Center, Portland, Oregon 97232; Sidney I. Lezak, U. S. Attorney, and Jack G. Collins, Assistant U. S. Attorney, Attorneys for Respondents, 506 United States Courthouse, Portland, Oregon 97205; Robert H. Bork, Solicitor General, Department of Justice, Constitution Avenue and 10th Street, N.W., Washington, D. C. 20530; which is their regular office addresses, or their addresses as last given by them on a document which they have filed in the within entitled cause and served on me; said envelopes, with first class postage prepaid, were then deposited in the United States Post Office at Portland, Oregon, on the day last above written.

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Of Attorneys for Amicus Curiae,
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